

1 The opinion in support of the decision being entered today was *not* written  
2 for publication in and is *not* binding precedent of the Board.

3  
4 UNITED STATES PATENT AND TRADEMARK OFFICE

5  
6  
7 BEFORE THE BOARD OF PATENT APPEALS  
8 AND INTERFERENCES

9  
10  
11 *Ex parte* DAVID J. WILSON

12  
13  
14 Appeal 2007-0896  
15 Application 09/731,019  
16 Technology Center 2100

17  
18  
19 Decided: May 22, 2007

20  
21  
22 Before HUBERT C. LORIN, STUART S. LEVY and ANTON W. FETTING,  
23 *Administrative Patent Judges.*

24 FETTING, *Administrative Patent Judge.*

25 DECISION ON APPEAL

26  
27  
28 STATEMENT OF CASE

29 This appeal involves claims 1, 2, and 7-17, the only claims pending in this  
30 application. We have jurisdiction over the appeal pursuant to 35 U.S.C. §§ 6 and  
31 134.

32  
33 We AFFIRM.

1       The Appellant invented a way for users of content on a distributed  
2 communication network to collectively indicate the degree of helpfulness or  
3 usefulness of individual items of content, such as for example reviews of  
4 commercially available products and/or services, usenet postings, news articles,  
5 etc., by interactively voting or indicating that particular items of content were  
6 helpful or otherwise valuable to the user. Subsequent users then are able to sort  
7 retrieved items of content by degree of helpfulness or usefulness according to the  
8 number of previous users who have indicated that the individual items of content  
9 were helpful or otherwise valuable (Specification 1). An understanding of the  
10 invention can be derived from a reading of exemplary claim 1, which is reproduced  
11 below.

12       1. A method for identifying as being helpful or otherwise valuable  
13 product/service reviews in a database coupled to a distributed  
14 communication network, the method comprising:  
15 displaying product/service reviews from the database on a client  
16 display connected to the database over the network;  
17 providing an interactive element associated with each of the displayed  
18 reviews on the client display, which when clicked by a user, indicates  
19 that the user has found a displayed review associated with a  
20 product/service helpful in determining whether or not to purchase or  
21 use the product/service;  
22 receiving at the database an indication that the user has clicked the  
23 interactive element, and incrementing a count of a stored number of  
24 indications for the review (1) in response to the indication and (2) if  
25 the stored number of indications does not exceed one indication for  
26 the review from the user; and  
27 displaying the count of the stored number of indications for the review  
28 on the client display together with the review.

1 This appeal arises from the Examiner's Non-Final Rejection, mailed June 21,  
2 2005. The Appellant filed an Appeal Brief in support of the appeal on May 3,  
3 2006, and the Examiner mailed an Examiner's Answer to the Appeal Brief on July  
4 13, 2006. A Reply Brief was filed on September 18, 2006.

5 PRIOR ART

6 The prior art references of record relied upon by the Examiner in rejecting the  
7 appealed claims are:

8 Klingman US 5,950,172 Sep. 7, 1999

9 Salas US 6,230,185 B1 May 8, 2001  
10 (Jul. 15, 1998)

11 Epinions.com Preview,  
12 <http://web.archive.org/web/19991204120227/www.epinions.com/>, Original Date  
13 12/4/99, Printed 2/24/04

14 NowThis.com, Log 1999 11 November, <http://nowthis.com/log/1999/11/24.html>,  
15 Original Date 11/24/99, Printed 8/28/04

16  
17 REJECTIONS

18 Claims 1-2 and 7-17 stand rejected under 35 U.S.C. § 102(a) as anticipated by,  
19 or in the alternative, under 35 U.S.C. § 103(a) as obvious over NowThis.

20 Claims 1-2 and 7-17 stand rejected under 35 U.S.C. § 103(a) as obvious over  
21 Epinions and Salas.

22 Claims 1-2 and 7-17 stand rejected under 35 U.S.C. § 103(a) as obvious over  
23 Klingman.

ISSUES

The issues pertinent to this appeal are

- Whether the rejection of claims 1-2 and 7-17 under 35 U.S.C. § 102(a) as anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as obvious over NowThis is proper.
  - Whether NowThis shows or suggests a user interface and whether NowThis shows or suggests that the interface would have limited votes to one per person (Br. 9-12).
- Whether the rejection of claims 1-2 and 7-17 under 35 U.S.C. § 103(a) as obvious over Epinions and Salas is proper.
  - Whether the art applied shows or suggests one vote per person, whether it shows or suggests votes applied toward rating usefulness or product or service reviews, and whether what the nature of the textual material the votes apply to can define the invention over the art (Br. 12-15).
- Whether the rejection of claims 1-2 and 7-17 under 35 U.S.C. § 103(a) as obvious over Klingman is proper.
  - Whether the art applied shows or suggests votes applied toward rating usefulness or product or service reviews, and whether what the nature of the textual material the votes apply to can define the invention over the art (Br. 15-16).

In particular, the Appellant contends that what the interface written about in NowThis is speculative, that the Examiner may not rely on official notice of the notoriety of one voter per person because other voting methods also exist, that

1 Epinions would render Salas unsuitable for its intended purpose, and that  
2 Klingman does not show application to reviewing reviews.

3  
4 FACTS PERTINENT TO THE ISSUES (FF)

5 The following facts, supported by a preponderance of substantial evidence, are  
6 pertinent to the above issues.

7 01. NowThis shows a copy of a textual display as it appeared on the  
8 Amazon.com web site.

9 02. At the end of the textual display, as it appeared on the Amazon.com web  
10 site, there is a statement that “1 people found this review helpful. 0 did  
11 not.” This is followed by the question “Was it helpful to you?”. This  
12 question in turn is followed by two possible answers in brackets, “[YES]”  
13 and “[NO].” The brackets with answers within them imply the reader is to  
14 select one of the answers, and that the selection would be transmitted to  
15 Amazon.com. Such a query followed by potential answers to select would  
16 have presented a user interface on the Amazon.com web site to solicit the  
17 requested information.

18 03. The statement as to how many people did and did not find the review  
19 helpful, implies that Amazon retains a count of how many YES and NO  
20 responses are transmitted.

21 04. Thus, NowThis shows that the Amazon.com web site had a user interface  
22 that displayed product/service reviews from a database on a client display  
23 connected to the database over the network; provided an interactive  
24 element associated with each of the displayed reviews on a client display,  
25 which when clicked by a user, indicated that the user has found a

1 displayed review associated with a product/service helpful in determining  
2 whether or not to purchase or use the product/service; received at the  
3 database an indication that the user has clicked the interactive element, and  
4 incrementing a count of a stored number of indications for the review in  
5 response to the indication; and displayed the count of the stored number of  
6 indications for the review on the client display together with the review.

7 05. However, NowThis is silent as to whether the count was incremented if  
8 the stored number of indications did not exceed one indication for the  
9 review from the user.

10 06. The Examiner has taken official notice of the notoriety of one vote per  
11 person (Answer 3-7).

12 07. It is clear that any count of the number of positive and negative reviews  
13 would be meaningless were a single voter able to cast multiple votes.

14 08. Thus, the nature of the subject matter being voted on in NowThis suggests  
15 that the count was incremented if the stored number of indications did not  
16 exceed one indication for the review from the user.

17 09. Epinions presents a user interface similar to that discussed regarding  
18 Amazon.com in FF02& 03 at the bottom of the page marked 10.

19 10. Epinions is explicitly a review of reviews (Epinions, p. 8, "Who needs  
20 another buying guide... to rate the opinions ...")

21 11. Salas explicitly limits votes to one per voter (Salas, col. 16, ll. 51-54).

22 12. Salas's votes apply to questions posed by a discussion group related to  
23 products and services.

24 13. Thus, a person of ordinary skill in the art would have consulted both  
25 Epinionions and Salas in the design of a user interface for reviews related to

1 products, and would have understood from Salas the importance of Salas’  
2 teaching of one vote per voter in designing Epinion’s voting.

3 14. A display of reviews is non-functional descriptive material.

4 15. Thus, claim 1 is directed toward voting on a review of non-functional  
5 descriptive material.

6  
7 PRINCIPLES OF LAW

8 In order to determine whether a prima facie case of obviousness has been  
9 established, we considered the three factors set forth in *Graham v. John Deere Co.*,  
10 383 U.S. 1, 17 (1966), viz., (1) the scope and content of the prior art; (2) the  
11 differences between the prior art and the claims at issue; and (3) the level of  
12 ordinary skill in the art. We also considered the requirement, as recently re-stated  
13 in *In re Kahn*, 441 F.3d 977, 78 USPQ2d 1329 (Fed. Cir. 2006), for a showing of a  
14 “teaching, suggestion, or motivation” to modify or combine the prior art teaching.  
15 As to this test, the court explained,

16 The ‘motivation-suggestion-teaching’ test asks not merely what the  
17 references disclose, but whether a person of ordinary skill in the art,  
18 possessed with the understandings and knowledge reflected in the  
19 prior art, and motivated by the general problem facing the inventor,  
20 would have been led to make the combination recited in the claims....  
21 From this it may be determined whether the overall disclosures,  
22 teachings, and suggestions of the prior art, and the level of skill in the  
23 art – i.e., the understandings and knowledge of persons having  
24 ordinary skill in the art at the time of the invention – support the legal  
25 conclusion of obviousness.

26  
27 441 F.3d at 988, 78 USPQ2d at 1337 (internal citations omitted). It is not just  
28 the explicit teachings of the art itself, but also the understandings and knowledge

1 of persons having ordinary skill in the art, that play a role in applying the  
2 motivation-suggestion-teaching test.

3 The Federal Circuit has repeatedly recognized that to establish a prima facie  
4 case of obviousness, the references being combined do not need to explicitly  
5 suggest combining their teachings. See e.g., *In re Kahn*, 441 F.3d at 987-88, 78  
6 USPQ2d at 1336 (“the teaching, motivation, or suggestion may be implicit from  
7 the prior art as a whole, rather than expressly stated in the references”); and *In re*  
8 *Nilssen*, 851 F.2d 1401, 1403, 7 USPQ2d 1500, 1502 (Fed. Cir. 1988) (“for the  
9 purpose of combining references, those references need not explicitly suggest  
10 combining teachings”). The court recently noted,

11 An explicit teaching that identifies and selects elements from different  
12 sources and states that they should be combined in the same way as in  
13 the invention at issue, is rarely found in the prior art. As precedent  
14 illustrates, many factors are relevant to the motivation-to-combine  
15 aspect of the obviousness inquiry, such as the field of the specific  
16 invention, the subject matter of the references, the extent to which  
17 they are in the same or related fields of technology, the nature of the  
18 advance made by the applicant, and the maturity and congestion of the  
19 field.

20 *In re Johnston*, 435 F.3d 1381, 1385, 77 USPQ2d 1788, 1790 (Fed. Cir. 2006).

21 Nonfunctional descriptive material cannot render nonobvious an invention that  
22 would have otherwise been obvious. *In re Ngai*, 367 F.3d 1336, 1339, 70 USPQ2d  
23 1862, 1864 (Fed. Cir. 2004). Cf. *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ  
24 401, 404 (Fed. Cir. 1983) (when descriptive material is not functionally related to  
25 the substrate, the descriptive material will not distinguish the invention from the  
26 prior art in terms of patentability).



ANALYSIS

We note that the Appellant argue these claims as a group. Accordingly, we select claim 1 as representative of the group.

*Claims 1-2 and 7-17 rejected under 35 U.S.C. § 102(a) as anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as obvious over NowThis.*

From the above Findings of Fact, supported by substantial evidence, we conclude that

- NowThis suggests, but does not anticipatorily show, a user interface and whether that NowThis shows or suggests that the interface would have limited votes to one per person (FF 04& 08).

As to the Appellants' contention that Amazon.com's user interface is speculation, the interface display is presented directly in NowThis, and the question and answers imply how a person of ordinary skill in the art would have understood Amazon.com's site to have reacted to selection of an answer. As to the Appellants' contention that there are other voting methods available, the nature of the material being voted on requires one vote per person, and thus the general problem facing the inventor would have led a person of ordinary skill in the art to the use of one vote per person.

Accordingly we sustain the Examiner's rejection of claims 1-2 and 7-17 under 35 U.S.C. § 103(a) as obvious over by NowThis, but we do not sustain the rejection under 35 U.S.C. § 102(a) as anticipated by NowThis.

*Claims 1-2 and 7-17 rejected under 35 U.S.C. § 103(a) as obvious over Epinions and Salas.*

From the above Findings of Fact, supported by substantial evidence, we conclude that

- The art applied shows or suggests one vote per person, and it shows or suggests votes applied toward rating usefulness or product or service reviews (FF 10&13).
- The nature of the textual material the votes apply to cannot define the invention over the art because the descriptive material is not functionally related to the substrate (see *Ngai*).

As the Examiner has shown how the combination of Epinions and Salas describes the remaining claimed subject matter, we do not find reversible error.

Accordingly we sustain the Examiner's rejection of claims 1-2 and 7-17 under 35 U.S.C. § 103(a) as obvious over Epinions and Salas.

*Claims 1-2 and 7-17 rejected under 35 U.S.C. § 103(a) as obvious over Klingman.*

From the above Findings of Fact, supported by substantial evidence, we conclude that

- The nature of the textual material the votes apply to cannot define the invention over the art because the descriptive material is not functionally related to the substrate (see *Ngai*).

As the Examiner has shown how Klingman describes the remaining claimed subject matter, we do not find reversible error.

Accordingly we sustain the Examiner's rejection of claims 1-2 and 7-17 under 35 U.S.C. § 103(a) as obvious over Klingman.

## DECISION

To summarize, our decision is as follows:

- The rejection of claims 1-2 and 7-17 under 35 U.S.C. § 102(a) as anticipated by NOWTHIS is not sustained, but the rejection under 35 U.S.C. § 103(a) as obvious over NOWTHIS is sustained.
- The rejection of claims 1-2 and 7-17 under 35 U.S.C. § 103(a) as obvious over Epinions and Salas is sustained.
- The rejection of claims 1-2 and 7-17 under 35 U.S.C. § 103(a) as obvious over Klingman is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

vsh

Appeal 2007-0896  
Application 09/731,019

- 1 SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH/EBAY
- 2 P.O. BOX 2938
- 3 MINNEAPOLIS MN 55402